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Via FOIA Online Submission & Electronic Mail

January 24, 2017

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
Email: hq.foia@epa.gov
Tel: (202) 566-1667

Re: FOIA Records Request

Dear FOIA Officer at EPA:

Pursuant to the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and on behalf of The Humane Society of the United States ("HSUS"), I hereby request:

1. Any and all records *received from, sent to, or that otherwise reference* Scott Pruitt, Nominee for EPA Administrator, since November 9, 2016; and
2. Any and all records of responses to FOIA requests related to the request in paragraph 1 that the EPA has prepared since January 1, 2016.

Please limit your search to records produced since the date indicated, to the present date. This request is intended to apply to records maintained, controlled, or otherwise retained by the Environmental Protection Agency ("EPA") (including any and all divisions of EPA that maintain related materials). As used in this request, the term "records" includes but is not limited to any reports, studies, financial materials, webinars, electronic presentations, correspondence including recorded messages, memoranda, meeting notes and minutes, drafts and working papers, notes and summaries of conversations and interviews, electronic mail messages (e-mails), audits, audit reports, third-party complaints (e.g. complaints from the general public or employees within the agency), presentations, graphic material, video, and any other form of written, electronic, or recorded information.

If you believe that certain portions of records are subject to an exemption under the FOIA, please redact any such portions with direct reference to the claimed exemption, and produce all non-exempt portions of those documents. *See* 5 U.S.C. § 552(b). For exempted materials, please provide a full or partial denial letter and sufficient information to appeal the denial. At a minimum, please include in this letter basic factual information regarding the denial, including the originator, date, length, and addresses of the withheld items; all explanations and justifications for the denial, including any direct statutory or regulatory references; and how each exemption applies to the withheld materials.

Fee Waiver

HSUS is a nonprofit organization with millions of supporters whose mission is to “create a humane and sustainable world for all animals, including people, through education [and] advocacy.” As a 501(c)(3) non-profit organization, HSUS does not have a commercial, trade, or profit interest in the information requested, and is not requesting “trade secrets and commercial or financial information obtained from a person and privileged or confidential,” as defined by FOIA, or any other information exempted pursuant to 5 U.S.C. § 552(b).

A waiver of search, review, and duplication fees is warranted here because disclosure of the requested records meets the two-part public interest test in that “it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

The legislative history and administrative and judicial interpretations of FOIA make it clear that the “fee waiver provision ‘is to be liberally construed in favor of waivers for noncommercial requesters.’” *Schoenman v. FBI*, 604 F.Supp.2d 174, 192 (D.D.C. 2009) (quoting *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir.1987) (quoting 132 Cong. Rec. 27, 90 (1986) (Sen. Leahy))).¹

The request at issue satisfies the legal requirements to mandate a public interest fee waiver under both 5 U.S.C. § 552(a)(4)(A)(iii) and EPA’s interpretation of the same, as set forth in 40 C.F.R. § 2.107(l). HSUS has the ability to contribute to the public’s understanding of federal agencies’ policies and activities, and the effects of the agency’s operations on the natural environment. HSUS is a non-profit advocacy and education organization with a national reach and a commitment to a “sustainable world for all animals,” and thus is particularly well-suited to distribute the requested information to individuals and others who may

¹ The legislative history of the fee waiver provision reveals that it was added to FOIA “in an attempt to prevent government agencies from using high fees to discourage certain types of requesters, and requests,” such as those from journalists, scholars, and nonprofit public interest groups. *See Ettlinger v. FBI*, 596 F.Supp. 867, 872 (D. Mass. 1984).

be interested in it. Moreover, HSUS also has no commercial interest in the requested information. See 40 C.F.R. § 2.107(l)(3).

HSUS intends to use the information received to communicate this information to other interested individuals. HSUS routinely distributes data, news releases, reports, and copies of original documents to the public directly and to members of the media to generate informative articles.² HSUS also distributes, at no charge, its own information and information obtained from other sources regarding policies and activities relating to environmental and public health.³ Consumers of this information include scientists, students, governmental entities, the regulated community, media outlets, and the general public.

In summary, HSUS believes that this request satisfies the legal criteria for fee waiver:

1. HSUS is a nonprofit public interest group. The records requested relate to government activities that will contribute to public understanding of FSA funding decisions in individuals' community. The information sought is of significant public interest and not generally otherwise available. Because of its size and proven ability to disseminate information to a large segment of the public, HSUS is well-suited to contribute to the public's understanding of federal agencies' policies and activities relating to the environment and public health. Furthermore, HSUS is not seeking information exempted by FOIA.
2. The disclosure of the requested records would be to the primary benefit of the general public. HSUS has demonstrated its ability to review, compile, and disseminate to the general public the information it acquires. This is achieved by state and nationally distributed newsletters, statewide membership mailings, information available electronically via the Internet, and extensive and reliable media contacts. A fee waiver must be granted when the public interest in disclosure is greater in magnitude than the requester's commercial interest. See DOJ FOIA Update, Vol. VIII, No. 1, at 9.

² HSUS's gathering and distribution of information to the public also, and independently, qualifies it for a fee limitation under the courts' broad interpretation of the FOIA's reference to a "representative of the news media," 5 U.S.C. § 552. See *Nat'l Security Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

³ See, e.g., HSUS, *An HSUS Report: Animal Agriculture and Climate Change*, available at <http://www.humanesociety.org/assets/pdfs/farm/animal-agriculture-and-climate.pdf> (April 2011); HSUS, *An HSUS Report: Food Safety and Cage Egg Production*, available at: http://www.humanesociety.org/assets/pdfs/farm/report_food_safety_eggs.pdf (May 2011).

HSUS believes that it has sufficiently met the criteria for a public interest fee waiver for this records request. HSUS often receives fee waivers from a variety of agencies on its FOIA requests.⁴ This request is no different.

If, however, EPA denies the waiver, and the request will involve a number of hours of search time or a number of pages of documents that will cause the FOIA response fees to exceed twenty dollars (\$20.00), please notify me immediately before processing the request. HSUS requests the notification so that it can decide whether to pay the proposed fees or to appeal the denial of the request for waiver.

Thank you for your assistance in this matter. Please contact me at (202) 676-2391 if you need any further information or require any clarification regarding this request. Please confirm the receipt of this request and provide a response to it within twenty (20) business days, as required by law under the FOIA. 5 U.S.C. § 552(a)(6)(A)(i). If this office is not the appropriate place for this request, please forward the request to the correct office or individual and inform me when doing so.

Sincerely,

/s/

Jimmy Metcalf, Litigation Fellow
Animal Protection Litigation
The Humane Society of the United States
1255 23rd Street NW, Suite 450
Washington, D.C. 20037
jmetcalf@humanesociety.org
(202) 676-2391

⁴ See, e.g., Apr. 17, 2014 Letter from Arianne Perkins, USDA Food Safety & Inspection Serv. Acting FOIA Director, to Peter Brandt, HSUS Senior Attorney, FOIA-2014-00224 (“Based on my review of your April 14, 2013 letter, and for the reasons stated herein, I have determined that your fee waiver request does sufficiently meet all of the criteria under the FOIA and the applicable regulations”) (Attach. A); May 11, 2015 Letter from Alex Webb, U.S. Army Corps of Eng’rs Assistant District Counsel, to Amanda Hungerford, HSUS Attorney, FOIA Request FA-15-0022 (Attach. B).

Attachment A



United States Department of Agriculture

Food Safety and
Inspection Service

1400 Independence
Avenue, SW.
Washington, D.C.
20250

APR 17 2014

Mr. Peter Brandt
Senior Attorney
The Humane Society of the United States
2100 L Street, N.W.
Washington, D.C. 20037

RE: FOIA-2014-00224

Dear Mr. Brandt:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) dated April 14, 2014, in which you requested a copy of records relating to Perdue and Harvestland poultry products labeling, from January 1, 2007 to April 11, 2014. FSIS received your request on April 16, 2014, and assigned tracking number FOIA-2014-00224. Please reference this number in any future communications with this office with regard to your request.

Pursuant to the FOIA, 5 USC 552(a)(6)(A)(i), the USDA's FSIS has twenty (20) working days upon receipt of a request to make a determination. In unusual circumstances, such as an agency's backlog or the need to examine a voluminous amount of records required by the request, or the need to consult with another agency, FSIS can extend the 20-day time limit for processing a request.

In addition to your request for records, you asked that we waive all fees associated with processing your request.

The USDA's FOIA Regulations, 7 CFR, Part 1, Subpart A, Appendix A, sets forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met. We will consider these factors in our evaluation of your request for a fee waiver:

1. The disclosure is in the public interest.
2. The disclosure is not primarily for commercial purposes.
3. The disclosure is not primarily for the benefit of a specific individual or entity.
4. The disclosure is not primarily for the benefit of a specific industry.
5. The disclosure is not primarily for the benefit of a specific government agency.
6. The disclosure is not primarily for the benefit of a specific foreign government.

1. Whether the subject of the requested records concerns "the operations or activities of the government."
2. Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.
3. Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.
4. Whether the contribution to public understanding of government operations or activities will be "significant."
5. Whether the requester has a commercial interest that would be furthered by the requested disclosure.
6. Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

As a requester, you bear the burden under the FOIA of showing that the Fee waiver requirements have been met. Based on my review of your April 14, 2014, letter and for the reasons stated herein, I have determined that your fee waiver request does sufficiently meet all of the criteria under the FOIA and the applicable regulations. Therefore, your request for a fee waiver is approved.

We will comply with your request to the fullest extent permissible by law. Any records not subject to an exemption will be forwarded to you promptly upon completion of FSIS' search and review process or if applicable, following receipt of any fees assessed to you.

Peter Brandt
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If you have any questions regarding the status of your request, please contact the FOIA staff at (202) 720-2109, or by e-mail at fsis.foia@usda.gov.

Thank you for your interest in FSIS programs and policies.

Sincerely,

for Arianne M. Perkins

Arianne M. Perkins
Acting Director, FSIS FOIA Office
Freedom of Information Act



Clean • Separate • Cook • Chill

Visit befoodsafegov.gov, askkaren.gov, or call 1-888-MPHotline.

Attachment B



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
180 FIFTH STREET EAST, SUITE 700
ST. PAUL, MN 55101-1678

May 11, 2015

Office of Counsel

SUBJECT: Freedom of Information Act Request, FA-15-0022 (Tracking No. FP-15-017675)

Ms. Amanda Hungerford
Litigation Fellow, Animal Protection Litigation
The Humane Society of the United States
2100 L Street NW
Washington, DC 20037

Dear Ms. Hungerford:

We received your Freedom of Information Act (FOIA) request on May 4, 2015. It was later perfected on May 11, 2015 when the request was reasonably described to allow a reasonable search for records. As stated by you on May 11th, the request seeks records to determine "if a certain facility obtained a permit to alter wetlands." This facility is owned by a corporation that sometimes goes by "Gourley Brothers, Gourley Brothers Premium Port, and other similar names." The facility itself is located in Todd County, Minnesota.

Enclosed with this response letter are the responsive records. These records contain information relating to the Gourley Brothers' operation. The records note that the project had a "no permit required" decision from the Corps of Engineers. In accordance with 32 CFR § 518.20, the costs of search, duplication and review fall within the scope of our automatic fee waiver. Therefore, there is no charge.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex C. Webb", is located below the "Sincerely," text.

Alex C. Webb
Assistant District Counsel